

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

REALTY INVESTMENT GROUP; MSB
HOMES LLC; VINCENT LUONG; INDER
BHANDAL; JAGROOP BHANDAL,

Plaintiffs,

v.

THUY THU PHAM and DOES 1-20,

Defendants.

Case No. 5:14-cv-04586 HRL

**ORDER THAT CASE BE REASSIGNED
TO A DISTRICT JUDGE**

**ORDER GRANTING IFP
APPLICATION**

**REPORT AND RECOMMENDATION
RE REMAND TO STATE COURT**

Jose Ramirez removed this unlawful detainer action from the Santa Clara County Superior Court.¹ He also seeks leave to proceed in forma pauperis (IFP). For the reasons stated below, the undersigned grants the IFP application, but nonetheless recommends that this matter be remanded to state court.

A court may authorize the commencement of a civil action in forma pauperis (“IFP”) if the court is satisfied that the applicant cannot pay the requisite filing fees. 28 U.S.C § 1915(a)(1). In evaluating such an application, the court should “gran[t] or den[y] IFP status based on the applicant’s financial resources alone and then independently determin[e] whether to dismiss the complaint on the grounds that it is frivolous.” Franklin v. Murphy, 745 F.2d 1221, 1226-27 n.5

¹ Although he is not named in the complaint, the record indicates that Ramirez is a renter on the property in question.

(9th Cir. 1984). A court may dismiss a case filed without the payment of the filing fee whenever it determines that the action “(i) is frivolous or malicious; (ii) fails to state a claim on which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B)(i)-(iii). Ramirez qualifies financially for IFP status, and his IFP application therefore is granted. Even so, he may not proceed in this court because there is no federal subject matter jurisdiction over this matter.

Removal to federal court is proper where the federal court would have original subject matter jurisdiction over the complaint. 28 U.S.C. § 1441. The removal statutes are strictly construed against removal and place the burden on the defendant to demonstrate that removal is proper. Moore-Thomas v. Alaska Airlines, Inc., 553 F.3d 1241, 1244 (9th Cir. 2009) (citing Gaus v. Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992)). Additionally, the court has a continuing duty to determine whether it has subject matter jurisdiction. Fed. R. Civ. P. 12(h). A case must be remanded to the state court if it appears at any time before final judgment that the court lacks subject matter jurisdiction. 28 U.S.C. § 1447(c).

Ramirez fails to show that removal is proper based on any federal law. Federal courts have original jurisdiction over civil actions “arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331. A claim “arises under” federal law if, based on the “well-pleaded complaint rule,” the plaintiff alleges a federal claim for relief. Vaden v. Discovery Bank, 129 S. Ct. 1262, 1272 (2009). Defenses and counterclaims asserting a federal question do not satisfy this requirement. Id. Here, plaintiffs’ complaint presents a claim arising only under state law. It does not allege any federal claims whatsoever. Allegations in a removal notice or in a response to the complaint cannot provide this court with federal question jurisdiction.

Nor does this court find any basis for diversity jurisdiction. Federal district courts have jurisdiction over civil actions in which the matter in controversy exceeds the sum or value of \$75,000 (exclusive of interest and costs) and is between citizens of different states. 28 U.S.C. §1332. Ramirez fails to identify the citizenship of each party, although he seems to suggest that the parties may be citizens of different states or countries. (Dkt. 1-1). But, this is of no import


1 because the complaint indicates that the amount in controversy does not exceed \$25,000 anyway.
2 Moreover, unlawful detainer actions involve the right to possession alone, not title to the property.
3 So, the fact that the subject property may be worth more than \$75,000 is irrelevant. MOAB
4 Investment Group, LLC v. Moreno, No. C14-0092EMC, 2014 WL 523092 at *1 (N.D. Cal., Feb.
5 6, 2014); Maxwell Real Estate Investment LLC v. Bracho, No. C12-02774RMW, 2012 WL
6 2906762 at *1 (N.D. Cal., July 13, 2012).

7 There being no basis for federal jurisdiction over plaintiffs' unlawful detainer action, the
8 removal of this case was improper. Ramirez is advised that future attempts to remove this matter
9 may result in sanctions.

10 Because the parties have yet to consent to the undersigned's jurisdiction, this court
11 ORDERS the Clerk of the Court to reassign this case to a District Judge. The undersigned further
12 RECOMMENDS that the newly assigned judge remand the case to the Santa Clara County
13 Superior Court. Any party may serve and file objections to this Report and Recommendation
14 within fourteen days after being served. Fed. R. Civ. P. 72.

15 Dated: October 15, 2014

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HOWARD R. LLOYD
UNITED STATES MAGISTRATE JUDGE

United States District Court
Northern District of California

1 5:14-cv-04586-HRL Notice has been electronically mailed to:

2 Kirkman Jan Hoffman kirk@kirkhoffman.com
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4

5 5:14-cv-04586-HRL A copy of this order sent by U.S. Mail to:

6 Jose Ramirez
7 10822 Barrington Bridge Court
8 Cupertino, CA 95014
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